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Attorneys for Ricoh Company, Ltd.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

SYNOPSYS, INC.,

Plaintiff,

vs.

RICOH COMPANY, LTD.,

Defendant.

**CASE NO. C-03-2289-MJJ**

**DECLARATION OF MICHAEL WEINSTEIN  
IN SUPPORT OF RICOH'S NOTICE OF  
MOTION AND MOTION FOR APPROVAL  
OF PROTECTIVE ORDER AND  
SUPPORTING BRIEF**

**Date: February 10, 2004  
Time: 9:30 a.m.  
Courtroom: 11**

Michael A. Weinstein declares as follows:

1. My name is Michael A. Weinstein, an attorney with the law firm of Dickstein, Shapiro, Morin & Oshinsky, LLP, counsel for Ricoh Company Limited (“RicoH”). I am over the age of 21 and am competent to make this declaration. Based on my personal knowledge and information, I hereby declare to all the facts in this declaration
2. Attached hereto as Ex. 1 is a true and correct copy of the Stipulated Protective Order from *Ricoh v. Aeroflex et al* dated 6/9/03.
3. Attached hereto as Ex. 2 is a true and correct copy of the DSMO Letter from E. Meilman to E. Moller dated 11/3/03
4. Attached hereto as Ex. 3 is a true and correct copy of the Howrey Letter, with attachment, from C. Kelley to E. Meilman dated 11/7/03
5. Attached hereto as Ex. 4 is a true and correct copy of the DSMO Letter from E. Meilman to E. Moller dated 11/20/03.
6. Attached hereto as Ex. 5 is a true and correct copy of the Howrey Letter from E. Moller to E. Meilman dated 12/7/03.
7. Attached hereto as Ex. 6 is a true and correct copy of Howrey Letter, with attachments, from E. Moller to E. Meilman dated 11/13/03.
8. Attached hereto as Ex. 7 is a composite exhibit which are true and correct copies of print-outs of websites discussing SURF dated 1/6/04. The source of each web page print out is indicated on the bottom of each printed page.
9. Attached hereto as Ex. 8 is a true and correct copy of the Stipulated Protective order form from the North District of California website.
10. Attached hereto as Ex. 9 is a true and correct copy of the transcript of Case Management Conference in *Ricoh v. Aeroflex et al* dated 5/16/03.

1 11. Counsel for Ricoh met and conferred with counsel for Synopsys in November and  
2 December, 2003 and discussed, among other issues, a designation of a secure facility to safeguard  
3 software source code. However, the parties were unable to reach an agreement designating a secure  
4 facility.

5 I declare under penalty of perjury under the laws of the United States of America that the  
6 foregoing is true and correct. Signed at Washington, D.C. on January 6, 2004.  
7

8 /s/ Michael A. Weinstein  
9 Michael A. Weinstein  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

RICOH COMPANY, LTD.,

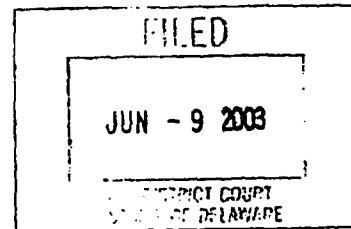
Plaintiff,

v.

AEROFLEX INCORPORATED, AMI  
SEMICONDUCTOR, INC., MATROX  
ELECTRONIC SYSTEMS LTD.,  
MATROX GRAPHICS INC., MATROX  
INTERNATIONAL CORP. and  
MATROX TECH, INC.

Defendants.

C.A. No. 03-103-GMS



**STIPULATED PROTECTIVE ORDER**

WHEREAS the parties are or may be competitors and believe that confidential information about certain of its research and development activities and other confidential information concerning its activities constitute very valuable commercial information that, if disclosed to competitors or others, would significantly harm it, and

WHEREAS each of the parties expects certain documents, things, and information that are or will be encompassed by discovery demands made to each other or to non-parties constitute trade secret or other confidential research, development, or commercial information within the meaning of Rule 26(c) of the Federal Rules of Civil Procedure.

Each of the parties hereby stipulates that the following Stipulated Protective Order may be entered by the Court:

1. All Confidential Information produced or exchanged in the course of this litigation shall be used solely for the purpose of preparation and trial of this litigation and for no other purpose whatsoever, and shall not be disclosed to any person except in accordance with the terms hereof.

2. "Confidential Information," as used herein, means any information of any type, kind or character that is designated as "Confidential" by any of the supplying or receiving parties, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer or otherwise. In designating information as "Confidential," a party will make such designation only as to that information that it in good faith believes contains "Confidential Information."

3. (a) "Confidential Information" includes, but is not limited to, (i) proprietary technical information and specifications, (ii) trade secrets (iii) confidential know-how, and (iv) proprietary business and financial information and any other non-public information, the disclosure of which is likely to have the effect of causing significant competitive harm to the disclosing party or party from which the information was obtained. Nothing in this paragraph shall be construed to limit the description of "Confidential Information" set forth in paragraph 2.

(b) Nothing shall be regarded as "Confidential Information" if it is information that:

(i) is in the public domain at the time of disclosure, as evidenced by a written document;

(ii) becomes part of the public domain through no fault of the other party, as evidenced by a written document;

(iii) was in the receiving party's rightful and lawful possession at the time of disclosure, as evidenced by a written document; or

(iv) is lawfully received by the receiving party from a third party at a later date without restriction as to disclosure, provided such third party has the right to make the disclosure to the receiving party.

4. "Qualified Persons," as used herein means:

(a) To the Court and its officers and staff, including court reporters;

(b) Outside attorneys of record for the parties in this litigation and employees of such attorneys to whom it is necessary that the material be shown for purposes of this litigation;

(c) Outside experts, consultants, advisors or investigators (collectively referred to hereafter as "experts") who have signed an undertaking pursuant to paragraph 5 but only after compliance with the provisions of paragraph 5 below;

(d) To non-party support services including, but not limited to, court reporters, outside copy services, document imaging and database services, design services who have signed confidentiality agreements, jury consultants who have signed confidentiality agreements, mock jurors who have signed confidentiality agreements, and language translators who have signed confidentiality agreements (including support staff) as may be reasonably necessary in connection with the preparation or conduct of this action;

(e) Anyone to whom the parties consent in writing;

(f) If this Court so elects, any other person may be designated as a Qualified Person by order of this Court, after notice and opportunity to be heard to all parties.

5. Prior to the disclosure of any "Confidential Information" to any expert under Paragraph 4(c), counsel for the Party seeking to make the disclosure shall: (i) deliver a copy of this Protective Order as entered to such person, explain its terms to such person, and secure the signature of such person on a written undertaking in the form attached hereto as Exhibit A, and (ii) transmit by facsimile and mail to counsel for the other Parties a copy of the signed Exhibit A,

accompanied by a curriculum vitae, at least ten (10) calendar days before any "Confidential Information" designated under this Protective Order is to be disclosed to the signator. The curriculum vitae should identify the general area(s) of expertise of the expert, provide a brief job history, specify all employment, expert or consulting engagements by the expert within the past five (5) years, and state all present or prior relationships between the expert and any entity directly or indirectly involved in this litigation or providing an indemnity to any such entity, its subsidiaries or its affiliates. Any Party may object to the proposed disclosure to an expert within the ten (10) calendar day period following the transmittal of Exhibit A and the curriculum vitae, by stating specifically in writing the reasons why the Party believes such expert should not receive designated "Confidential Information". If during that ten (10) calendar day period, a Party makes such a written objection, there shall be no disclosure of "Confidential Information" to the expert absent mutual agreement of the Parties, waiver of the objection as stated below, or further order of the Court. After a Party objects to the proposed disclosure to an expert, the objecting Party shall move, by noticed motion or by *ex parte* application, for an order that disclosure not be made to such expert within five (5) business days following the date that the objection is made, or the Party's objection shall be deemed waived and disclosure may be made to the expert. The burden shall be on the objecting Party to establish why the disclosure should not be made. Each Party shall maintain a file of all such signed copies of Exhibit A. However, it shall not be necessary for administrative, secretarial or clerical personnel working for such Qualified Person to sign a written undertaking.

6. (a) Documents produced in this action may be designated by any party or parties as "Confidential" by marking each page of the document(s) with the designation "Confidential."



(b) In lieu of marking the original of a document, if the original is not produced, the designating party may mark the copies that are produced or exchanged. Originals shall be preserved for inspection.

(c) If the document is not in paper form, the producing person or entity shall use other such reasonable means as necessary to identify clearly the document or information as "Confidential."

7. Discovery responses or other litigation materials may be designated by any party or parties as "Confidential" by marking each page of the response with the designation "Confidential."

8. The designation of information disclosed during a deposition as "Confidential" shall be made either by a statement on the record at the deposition or within twenty (20) calendar days after receipt by counsel of a copy of the deposition transcript. Such designation will be applied to only those portions of the deposition transcript that include a specific question and response or series of questions and responses containing "Confidential Information." The deposition transcript shall be printed in consecutive pages (whether or not some pages are designated as "Confidential") with a marking on the cover of the deposition transcript indicating the "Confidential" designation contained therein. Unless previously designated otherwise, all deposition transcripts shall be treated as "Confidential" in their entirety prior to the end of the twenty (20) calendar day period following receipt by counsel of a copy of the deposition transcript.

9. "Confidential Information" shall not be disclosed or made available by the receiving party to persons other than Qualified Persons except that nothing herein is intended to prevent individuals who are in-house counsel or a member of the professional legal department

of the Parties from having access to pleadings, briefs and exhibits or declarations filed with the Court and expert reports, including exhibits, that are designated as "Confidential,"

10. (a) Documents to be inspected shall be treated as "Confidential" although such documents need not be marked as "Confidential" prior to inspection. At the time of copying for the receiving parties, any documents containing "Confidential Information" shall be stamped prominently "Confidential" by the producing party.

(b) Nothing herein shall prevent disclosure beyond the terms of this Order if each party designating the information as "Confidential" consents to such disclosure or if the Court, after notice to all effected parties, orders such disclosures. Nothing herein shall prevent any counsel of record from utilizing "Confidential Information" in the examination or cross-examination of any person who is indicated on the document as being an author, source or recipient of the "Confidential Information," irrespective of which party produced such information. Nothing herein shall prevent any counsel of record from utilizing "Confidential Information" in the examination or cross-examination of any person who is a current or former officer, director or employee of the party so designating the information as "Confidential" or of the party that produced the information or of a related entity.

11. If a party inadvertently discloses any document or thing containing information that it deems confidential without designating it as "Confidential," the disclosing party shall promptly upon discovery of such inadvertent disclosure inform the receiving party in writing, and the receiving party and all Qualified Persons possessing such information shall thereafter treat the information as "Confidential" under this Order. To the extent such information may have been disclosed to persons other than Qualified Persons described in this document, the receiving party shall make every reasonable effort to retrieve the information promptly from such persons and to avoid any further disclosure to and by such persons.

12. A party shall not be obligated to challenge the propriety of a designation as "Confidential" at the time made, and a failure to do so shall not preclude a subsequent challenge thereto. Nor will the failure to object be construed as an admission that any particular "Confidential Information" contains or reflects currently valuable trade secrets or confidential commercial information. In the event that any party to this litigation disagrees at any stage of these proceedings with the designation by the designating party of any information as "Confidential," or the designation of any person as a Qualified Person, the parties shall first try to resolve such dispute in good faith on an informal basis, such as production of redacted copies. If the parties are unsuccessful in informally resolving any disputes regarding the designation of any document or information as "Confidential," the Court shall resolve all such disputes. It shall be the burden of the party making any designation to establish that the information so designated is "Confidential" within the meaning of this Protective Order. The "Confidential Information" that is the subject of the dispute shall be treated as originally designated pending resolution of the dispute.

13. The parties may, by written stipulation filed and approved by the Court, amend this Order, and any party may seek an order of this Court modifying this Protective Order. The parties agree to meet and confer prior to seeking to modify this Protective Order. In addition, the Court may modify this Protective Order in the interest of justice or otherwise at the Court's discretion.

14. In the event a party wishes to use any "Confidential Information" in any affidavits, briefs, memoranda of law, or other papers filed with the Court in this litigation, such "Confidential Information" used therein shall be filed under seal with the Court.

15. The Clerk of this Court is directed to maintain under seal all documents and transcripts of deposition testimony and answers to interrogatories, admissions and other

pleadings filed under seal with the Court in this litigation that have been designated, in whole or in part, as "Confidential" by a party to this action.

16. If a Party intends to offer into evidence or otherwise disclose in open court any "Confidential Information" designated by another person or entity, counsel for such Party shall notify the designating person or entity that the Party intends to disclose "Confidential Information" in open court prior to the disclosure, so that the designating person or entity may confer with the Court concerning appropriate procedures for protecting its "Confidential Information."

17. In the event any person or party that has possession, custody, or control of any information designated as "Confidential" pursuant to the terms of this Protective Order receives a subpoena or other process or order to produce such information, such person or party shall notify by mail within five (5) business days of the Party's receipt of the request, the counsel for the party or persons claiming confidential treatment of the documents sought by such subpoenas or other process or order, shall furnish such counsel with a copy of said subpoena or other process or order, and shall cooperate with respect to any procedure sought to be pursued by the party whose interests may be affected. The party asserting the "Confidential" treatment shall have the burden of defending against such subpoena, process or order. The person or party receiving the subpoena or process or order shall be entitled to comply with it except: (a) to the extent the party asserting the "Confidential" treatment is successful in obtaining an order modifying or quashing it; and (b) in complying with the process or order shall, at a minimum, seek to obtain "Confidential" treatment of the "Confidential Information" before producing it in the other proceeding or action.

18. If the discovery process calls for the production of information that a Party or Non-Party does not wish to produce because the Party or Non-Party believes its disclosure would

breach an agreement with another person or entity to maintain such information in confidence, the disclosing Party or Non-Party promptly shall give written notice to the other person or entity that its information is subject to discovery in this litigation, and shall provide such person or entity with a copy of this Protective Order. When such written notice is given to the person or entity, the disclosing Party or Non-Party will advise the potential receiving Party that such notice has been given. The person or entity whose information may be subject to discovery shall have ten (10) business days from receipt of the written notice in which to seek relief from the Court, if the person or entity so desires. If the ten (10) business days elapse without the person or entity seeking relief from the Court, the requested information shall be produced in accordance with the terms of this Protective Order.

19. In the event that additional persons or entities become Parties, none of such Parties' counsel, experts or consultants retained to assist said counsel, shall have access to "Confidential Information" produced by or obtained from any other producing person or entity until said Party has executed and filed with the Court its agreement to be fully bound by this Protective Order.

20. This Protective Order shall apply to the parties and any non-party from whom discovery may be sought and who desires protection for the discovery sought. Thus, any non-party requested or required to produce or disclose information in this proceeding, through subpoena or otherwise, may designate such information pursuant to the terms of this Protective Order.

21. (a) Nothing herein requires disclosure of information, documents or things which the disclosing entity contends is protected from disclosure by the attorney-client privilege or the work-product exception. Nothing herein shall preclude any party from moving this Court for an order directing the disclosure of such information, documents or things.

(b) In the event that any privileged attorney-client or work product documents or things are inadvertently produced for inspection and/or provided, the disclosing party shall identify such documents or things within five (5) days of when it discovers that the privileged materials were inadvertently produced for inspection and/or provided, and either (1) copies shall not be provided, or (2) if copies have already been provided, all copies in the receiving party's possession shall be promptly returned (and not relied upon) by the receiving party. Nothing in this paragraph shall prevent the receiving party from contending that the identified materials are not privileged, that the material was not inadvertently produced, or that privilege was waived for reasons other than mere inadvertent production of the material.

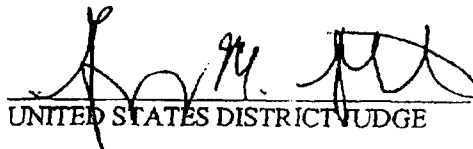
22. Within ninety (90) days after conclusion of this litigation and any and all appeals thereof, any document and all reproductions of "Confidential" documents produced by a party that are in the possession of any Qualified Person shall be returned to the producing party or, with the consent of the producing party, destroyed. If destroyed, counsel for the receiving party shall certify to counsel for the producing party compliance with this paragraph within fourteen (14) calendar days of such destruction. Outside counsel for each party may maintain in its files one copy of all material produced as well as all materials filed with or otherwise presented to the Court, deposition and trial transcripts, and work product (regardless of whether such materials contain or refer to "Confidential" materials). If counsel retains such materials, the materials which contain Confidential Information shall be accessible only by Qualified Persons defined in paragraph 4(b) above. As far as the provisions of any protective orders entered in this action restrict the communication and use of the documents produced thereunder, such orders shall continue to be binding after the conclusion of this litigation including any subsequent appeals or later proceedings, except that (a) there shall be no restriction on documents that are used as exhibits in Court unless such exhibits were filed under seal, and (b) a party may seek the written

permission of the producing party or order of the Court with respect to dissolution or modification of such protective orders. The Court shall retain jurisdiction to enforce the performance of said obligations.

23. This Order shall not bar any attorney herein in the course of rendering advice to his client with respect to this litigation from conveying to any party client his evaluation in a general way of "Confidential Information" produced or exchanged herein; provided, however, that in rendering such advice and otherwise communicating with his client, the attorney shall not disclose the specific contents of any "Confidential Information" produced by another party herein, which disclosure would be contrary to the terms of this Protective Order.

24. This Protective Order may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

SO ORDERED this 9<sup>th</sup> day of June, 2003.

  
UNITED STATES DISTRICT JUDGE

AGREED:

By: 

Robert W. Whetzel (#2288)  
Steven J. Fineman (#4025)  
Richards, Layton & Finger, P.A.  
One Rodney Square  
Post Office Box 551  
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Counsel for Plaintiff,  
Ricoh Company Ltd.



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Attorneys for Defendants

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Attorney for AMI Semiconductor, Inc.



EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

|                              |   |                     |
|------------------------------|---|---------------------|
| RICOH COMPANY, LTD.,         | ) |                     |
|                              | ) |                     |
| Plaintiff,                   | ) |                     |
|                              | ) | C.A. No. 03-103-GMS |
| v.                           | ) |                     |
|                              | ) |                     |
| AEROFLEX INCORPORATED, AMI   | ) |                     |
| SEMICONDUCTOR, INC., MATROX  | ) |                     |
| ELECTRONIC SYSTEMS LTD.,     | ) |                     |
| MATROX GRAPHICS INC., MATROX | ) |                     |
| INTERNATIONAL CORP. and      | ) |                     |
| MATROX TECH, INC.            | ) |                     |
|                              | ) |                     |
| Defendants.                  | ) |                     |

UNDERTAKING

My name is \_\_\_\_\_. I hereby acknowledge that I have been provided with a copy of, have read, and am fully familiar with, the terms of the Stipulated Protective Order entered in this action on \_\_\_\_\_, 2003. I agree to be bound by, and to comply fully with, the terms of the Protective Order. I agree not to disclose or disseminate any "Confidential Information," as defined by the Stipulated Protective Order, except as permitted therein.

I hereby submit myself to the jurisdiction of the United States District Court for the District of Delaware in connection with the enforcement of the Protective Order.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on \_\_\_\_\_, 2003.

\_\_\_\_\_



D I C K S T E I N   S H A P I R O   M O R I N   &   O S H I N S K Y   L L P

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November 3, 2003

**BY FACSIMILE AND U.S. MAIL**

Erik K. Moller, Esq.  
Howrey Simon Arnold & White, LLP  
301 Ravenswood Avenue  
Menlo Park, CA 94025-3434

Re:     *Ricoh Company Ltd. v. Aeroflex Incorporated, et al.*  
       *Snyopsys, Inc v. Ricoh Company Ltd.*  
       Our Ref.: R2180.0171

Dear Mr. Moller:

In response to your telefax of October 31, 2003, we do not see the need to negotiate a Protective Order when our two firms have already done so and a court has issued it, Judge Jenkins has already ordered Synopsys to proceed under the issued Order and Synopsys has done so. That Order provides the parties with the appropriate protection of confidential information. There is no reason it should not apply to both actions. Nevertheless, if you want to us to consider changes in the Order already in place, please send us a marked up copy with your proposed changes and indicate why the changes are appropriate.

Very truly yours,



Edward A. Meilman

EAM/rr

cc:     Gary Hoffman, Esq.  
       Kenneth Brothers, Esq.  
       Jeffrey Demain, Esq.

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EXHIBIT 3



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MENLO PARK, CA 94025-3434  
PHONE 650.463.8100  
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A LIMITED LIABILITY PARTNERSHIP

CHRISTOPHER L. KELLEY  
PARTNER  
650.463.8113  
kelleyc@howrcty.com

November 7, 2003

**VIA FACSIMILE AND U.S. MAIL**

Edward A. Meilman  
Dickstein Shapiro Morin & Oshinsky, LLP  
1177 Avenue of the Americas  
New York, NY 10036-2714

Re: Ricoh Company, Ltd. v. Aeroflex Incorporated, et al.  
Civil Action No. 03-103-GMS

Dear Edward:

I am writing in response to your letters of November 5. We propose a meet and confer to address the issues raised in these letters. We are available at 11 AM Pacific Coast Time (2 PM Eastern) on Tuesday, November 11. If this time is unacceptable, please propose an alternative time.

With respect to the subpoena on Synopsys, we informed you in our letter of October 22 that the notice of deposition of Synopsys was ineffective because you made no attempt to confer with us regarding a reasonable date for the deposition in advance of your notice. This is a basic requirement under N.D. Cal. Local Rule 30-1. If you intend to take the position that Rule 30 does not apply to depositions of third-parties and that the Northern District does not intend counsel to coordinate with third-parties prior to setting depositions, please let us know immediately. We have a contrary construction and we will need to seek the intervention of the Court if you stand by your position. In addition to this basic procedural requirement, we also believe that the topics identified in your notice are improper for a number of reasons set out in our previous letters. In addition, this deposition should be taken in connection with Synopsys' declaratory judgment action, especially given that the Delaware defendants have moved the Court to stay Ricoh's patent infringement action. We intend to discuss these issues in the proposed meet and confer in order to avoid the need to seek a motion to quash.

With regard to the protective order, you once again assert that "Judge Jenkins already ordered Synopsys to proceed under the Order issued by the Court in the *Ricoh v. Aeroflex* case." We suppose that you are referring to the fact that Judge Jenkins accepted a stipulation of the parties that an agreement presented by Synopsys at the August 19 hearing would be protected from dissemination pursuant to the protective order in place in Delaware. See 8/19/2003 Tr. at 13:4-20. It seems to us to be pure fantasy to assert that the Court's statement on page 13 constituted a ruling that the *Ricoh v. Aeroflex* order ought to govern all subsequent discovery in



Edward A. Meilman  
November 7, 2003  
Page 2

the *Synopsys v. Ricoh* matter. If this is, in fact, your position please state so plainly so that we can inquire directly of the Court as to whether that was its intent.

Your letter tries to make a great deal of the fact that this law firm is representing the defendants in the *Ricoh v. Aeroflex* case as well as Synopsys. That fact, however, is irrelevant to the question of whether the protections that were adequate to protect production from the *Ricoh v. Aeroflex* defendants are adequate to protect the production of highly confidential source code from Synopsys in the *Synopsys v. Ricoh* case.

As you observe in your letter, the protective order proposed by Synopsys is not merely a version of the *Ricoh v. Aeroflex* order with additional content. It is, in fact, based on the model Stipulated Protective Order on the Northern District's website. It is not critical to us whether the parties base their protective order on the *Ricoh v. Aeroflex* order or the Northern District's model order, as modified in Synopsys' original proposal. Synopsys does, however, wish to include a provision dealing with the disclosure of source code. I am attaching a copy of the relevant language that we wish to incorporate to address the production of source code.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read "Christopher L. Kelley".

Christopher L. Kelley

CLK:gg

cc: Gary M. Hoffman, Esq.



## ATTACHMENT

### Disclosure of Source Code

(a) Unless otherwise ordered by the Court or permitted in writing by the Producing Party, a Receiving Party's access to a Producing Party's discoverable source code is limited to inspection at a secured facility provided by the Producing Party. Such inspection may be conducted only by:

- (1) the Receiving Party's Outside Counsel of record in this action; and,
- (2) one (1) expert (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who has signed the "Agreement to Be Bound by Protective Order" (Exhibit \_\_) and who has been approved pursuant to the "Procedures for Approving Disclosure of 'CONFIDENTIAL' information or Items to 'Experts'" as set forth in paragraph \_\_;

(b) After any such inspection and upon the written request of the Receiving Party's Outside Counsel, the Responding Party, within a reasonable time, shall furnish hard-copy printouts of relevant source code files specifically identified in the Receiving Party's Outside Counsel's written request. Such hard-copy printouts shall be designated "CONFIDENTIAL" under this protective order;

(c) Any notes taken or any other information created by Outside Counsel or the expert of the Receiving Party at or based on any such inspection shall be treated as "CONFIDENTIAL" under this protective order;

(d) Each Producing Party designates and provides the following facilities for production of their discoverable source code via inspection in the present action:

- (1) All source code production by Synopsys in this action will be limited to inspection at its Secured User Research Facility (SURF). SURF is Synopsys' physically



and electronically secured area for providing access to Synopsys' source code. SURF is located at Synopsys' Corporate campus in Mountain View, CA.

(2) All source code provided by Ricoh will be produced \_\_\_\_\_.



**EXHIBIT 4**

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP

1177 Avenue of the Americas • New York, NY 10036-2714

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E-Mail Address: MeilmanE@dsmo.com

November 20, 2003

**BY FACSIMILE AND U.S. MAIL**

Erik K. Moller, Esq.  
Howrey Simon Arnold & White, LLP  
301 Ravenswood Avenue  
Menlo Park, CA 94025-3434

Re: *Synopsys, Inc. v. Ricoh Company, Ltd.*  
Case No. CV 03-02289 MJJ

*Ricoh Company, Ltd. v. Aeroflex Inc., et al.*  
Case No. CV 03-04669 MMJ  
Our Ref.: R2180.0171

Dear Erik:

With regard to the protective order, we believe that the following additional provision recording source code is appropriate:

Unless otherwise ordered by the Court or permitted in writing by the producing party, all source code produced or exchanged in the course of this litigation shall be Confidential Information and access thereto shall be limited to the outside attorneys of record for the parties in this litigation and employees of such attorneys to whom it is necessary that the material be shown for the purposes of this litigation and not more than three (3) outside experts who have signed an undertaking pursuant to paragraph 5 but only after compliance with the provision of paragraph 5. Any notes or other information created as a consequence of such access shall also be Confidential Information under this protective order. Working copies of the source code shall be maintained by the receiving party in a secure facility which, in the case of Synopsys means Synopsys' Secured User Research Facility (SURF) and in the case of Ricoh, means a locked office at the law firm of Dickstein Shapiro Morin & Oshinsky, LLP and which contains a computer which is not a part of any network and on which the source code can be loaded.

2101 L Street NW • Washington, DC 20037-1526

Tel (202) 785-9700 • Fax (202) 887-0689

[www.DicksteinShapiro.com](http://www.DicksteinShapiro.com)

Erik K. Moller, Esq.  
November 20, 2003  
Page 2

We believe that the secured facility we are offering is even more secure than Synopsys' SURF facility.

Very truly yours,



Edward A. Meilman

EAM/rra

cc: Gary Hoffman, Esq.  
Kenneth Brothers, Esq.  
Jeffrey Demain, Esq.

EXHIBIT 5

DEC. 7. 2003 4:20PM

NO. 4606 P. 2/2



301 RAVENSWOOD AVENUE  
MENLO PARK, CA 94025-3434  
PHONE 650.463.8100  
FAX 650.463.8400  
A LIMITED LIABILITY PARTNERSHIP

December 7, 2003

**VIA FACSIMILE AND U.S. MAIL**

Edward A. Meilman  
Dickstein Shapiro Morin & Oshinsky, LLP  
1177 Avenue of the Americas  
New York, NY 10036-2714

Re: *Synopsys, Inc. v. Ricoh Company, Ltd.*,  
Case No. C 03-2289 MJJ

Dear Ed:

This letter follows our discussion during the meet and confer teleconference on December 1, 2003 regarding the terms for the production of the source code for Synopsys' Design Compiler product in this action.

We stated that Synopsys could make arrangements at one of its East Coast facilities to provide Ricoh with more convenient access to the source code for Synopsys' Design Compiler product. You asked us to inquire as to the conditions for the production of the source code at such a facility. Synopsys can make arrangements to provide you with a secured location at its facility in Bethesda, Maryland. We would provide a computer that would be loaded with the source code to be produced by Synopsys and suitable software for review of this code. Synopsys will allow Ricoh to make hardcopy of specific portions of the source code. The hardcopy can then be reviewed, pursuant to the protective order, outside of the facility. You would have access to the Bethesda facility during regular business hours without need to make any special arrangements.

In addition, we continue to offer the use of Synopsys' SURF facility at its campus in Mountain View, at which you would have 24/7 access.

Very truly yours,

Erik K. Moller

EKM:gg

cc: Gary M. Hoffman  
Jeffrey B. Demain





301 RAVENSWOOD AVENUE  
MENLO PARK, CA 94025-3434  
PHONE 650.463.8100  
FAX 650.463.8400  
A LIMITED LIABILITY PARTNERSHIP

*VIA FACSIMILE and  
FIRST CLASS U.S. MAIL*

November 13, 2003

Edward A. Meilman  
Dickstein Shapiro Morin & Oshinsky, LLP  
1177 Avenue of the Americas  
New York, NY 10036-2714

Re: Synopsys, Inc. v Ricoh Company, Ltd., Case No. CV 03-02289 MJJ and  
Ricoh Company, Ltd. v. Aeroflex Inc., et al., Case No. CV 03-04669 MMJ

Dear Ed:

During today's telephone conference you referred to the fact that your firm has previously put into place secure facilities compliant with government requirements for reviewing secret defense documents, but you did not provide us with much detail about the particular security systems you employed. In order to give us a fair understanding of what you are proposing, it would be helpful if you could be more specific about your proposal. It is our understanding that facilities qualified to receive and possess classified information must comply with requirements from the National Industrial Security Program administered by the Department of Defense. Those requirements are set out in the "National Industrial Security Program Operating Manual," which is available from the Department of Defense. See [www.dss.mil/isec/nispom.pdf](http://www.dss.mil/isec/nispom.pdf). This document is rather extensive. It would be useful if you could identify what provisions from this manual you would propose to implement.

To give you some idea of the nature of our proposal, I am enclosing a copy of a brochure describing Synopsys' SURF facility.

Very Truly Yours.

A handwritten signature in black ink, appearing to read "EKM".

Erik K. Moller

EKM/gj

cc: Gary M. Hoffman ✓  
Jeffrey Demain

Secure User Research Facility



## Secure User Research Facility

### S.U.R.F. Features

Restricted badge-secured access

15 private offices with key-code locks, hard walls and secured ceilings

Up to 15 separate networks with multiple nodes on each network

Configuration allows any number of networks to be merged into a single shared network

Firewall can be configured to permit or deny data flow between Synopsys and customers' or partner's networks

Separate fire and security systems

Shredders and confidential trash bins

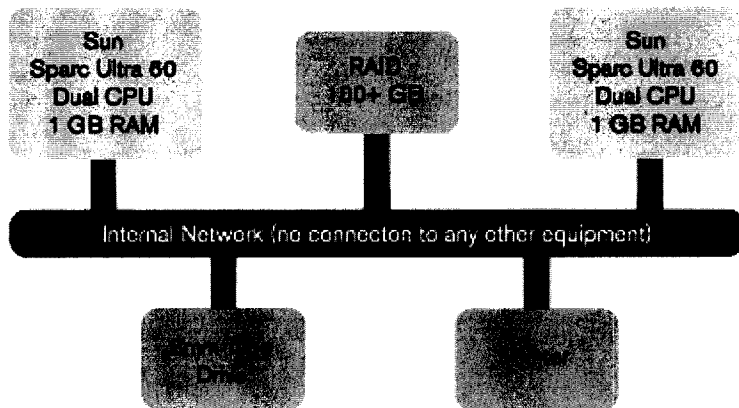
Synopsys' Secure Information Program ensures that our technology leadership is matched by Intellectual Property protection leadership. Synopsys' SECURE USER RESEARCH FACILITY (S.U.R.F.) is an example of our commitment to safeguarding intellectual property.

S.U.R.F. is located on our corporate campus in Mountain View. It provides our business partners and customers a secure working environment separate from other Synopsys activities. Our customers and partners have used S.U.R.F. for tool-interoperability projects and other special situations

For more information please contact: Julie McManus, Secure Information Program Coordinator at (650) 584-5140. For legal questions, please contact Roger Klein, Deputy General Counsel at (650) 584-4058.

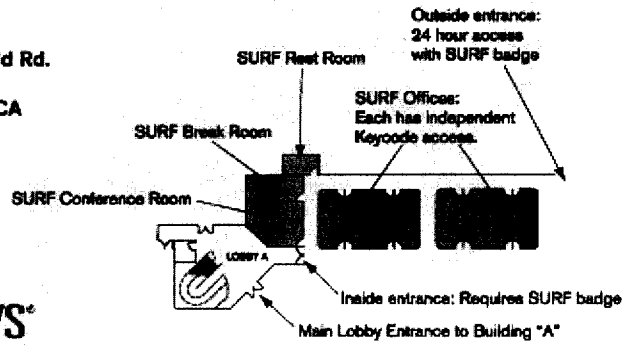


## Synopsys **SURF** – Lab Configuration



# Synopsys **SURF Lab**

Location:  
700 E. Middlefield Rd.  
Building A  
Mountain View, CA



**SYNOPSYS**

FIRST FLOOR PLAN  
BUILDING A



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## Synopsys Secure User Research Facility

### Description

- Secure and Convenient Access
  - 24 hour access to S.U.R.F. facility via keycard with PIN.
- Work Environment Isolated from Other Users
  - Equipment configured "standalone." No network access.
  - Private offices walled with secure ceilings.
  - Independently accessible via keycode lock
  - Shredders and confidential trash bins available.
  - Lab configuration
- Maintenance and Support
  - Selected Synopsys tools installed on lab machines. Releases periodically updated.
  - Synopsys tools and flows fully supported on-site.
- Location

### S.U.R.F. Qualification Criteria

The S.U.R.F. lab facilities at Synopsys are available to qualified EDA vendors, approved by Synopsys to test and enhance EDA interoperability with Synopsys tools for the benefit of our mutual customers.

The EDA vendors applying to S.U.R.F. must adhere to all security requirements and guarantee Synopsys IP protection.

The following criteria must be met:

- There is a clear customer demand for the flow(s).
- Synopsys IP protection is guaranteed.
- Vendor adheres to all security requirements.
- Access is approved by Synopsys.

### How Do I Apply?

1. Contact S.U.R.F. program manager at Synopsys:  
 Karen Bartleson  
 tel: (650) 584.4840  
 fax: (650) 584.4102  
 email: [karenb@synopsys.com](mailto:karenb@synopsys.com)

2. Submit and fax the complete Access Agreement, Usage Agreement, and the Nondisclosure Agreement (NDA) documents to the S.U.R.F. program manager. You will then be contacted to complete the registration process and your application will be reviewed.
3. Upon arrival on the first day, S.U.R.F. coordinator will:
  - o Escort you to security
    - o Receive photo ID and access codes
  - o Guide you to S.U.R.F. area
    - o Test badges to ensure accessibility
  - o Lead you to private office
    - o Test access codes to ensure accessibility
    - o Tour area to become familiar with what's available
  - o Verify S.U.R.F. equipment and required software functionality with you
    - o Ensure everything is working
  - o Leave you alone to do your work in your private office
    - o Application Engineer and system administrator available by contacting S.U.R.F. coordinator

**ACCESS CONTROL &  
SECURITY SYSTEMS.**

## A High-Tech Fortress

By PETER CASSIDY

Access Control & Security Systems, Sep 1, 2003

Ten years ago, Synopsys Inc. decided it needed a secure means of working out conflicts in its chip-design software. The company wanted to protect its intellectual property (IP) — and that of its customers. A central asset in the world of semi-conductor design, IP is often the backbone of a company's proprietary secrets and its most valued ideas and data.

To protect intellectual property during product development, Synopsis decided to erect its own miniature industrial “Camp David” right on its Mountain View, Calif. campus. The facility would provide a neutral venue for IP-rich discussions, and customers could be assured no IP would be kept or recorded by Synopsys or third parties.

According to director of quality and interoperability Karen Bartleson, customers were previously faced with the hard choice of working around a problem or exposing their IP to Synopsys — some of it involving trade secrets not yet protected by patents.

“We had to come up with a way to deal with customers, protect them, solve their problems and secure their intellectual property,” says Bartleson.

To ensure Synopsis and its customers could work together while keeping control of their IP, Synopsys created a Secure User Research Facility (SURF), a set of technically isolated office spaces. There are 16 different SURF offices, each one completely isolated and off the network, with its own printers and computers and locking doors secured by smart cards and keypads that are controlled by the visiting customers' and business partners' pass codes.

The facility enables customers' engineers to arrive with their software and mount it on the isolated computers and work with Synopsys engineers, secure in the knowledge that their software will be wiped off the non-networked computers when they leave.

The SURF solution demonstrates the enduring relationship between physical security and information security. By creating a solution constructed of off-the-shelf technologies and security protocols, Synopsys was able to satisfy its customers that a critical security issue had been resolved.

The SURF is a secured, 24-hour accessible location for electronic design automation (EDA), tool interoperability development and testing with selected Synopsys products and design flows. The SURF is generally available to EDA vendors to address customer interoperability issues with on-site application engineering and system administration support. SURF can be used by two types of companies:

- Non-EDA companies that have purchased Synopsys products: *i.e.*, commercial customers (designers); and
- Qualified EDA companies looking to validate tool interoperability.

The EDA vendors applying to SURF must adhere to all security requirements. The following criteria must be met:

- There is a clear customer demand for the flow(s);
- Synopsys IP protection is guaranteed; and
- Access is approved by Synopsys product teams and the legal department.

To access the SURF, a company representative completes an Access Agreement application, a Usage Agreement, and a Non-Disclosure Agreement (NDA), and submits them to the SURF program manager.

The Usage Agreement restricts use to what is specified in exhibit "A". An "audit" capability in the agreement is defined to enforce the restriction while simultaneously protecting any intellectual property brought into the SURF area.

The application is then reviewed by the SURF program manager who validates the proposed tool interoperability test plan, and secures authorization from Synopsys' legal department and the involved product marketing teams.

On a day-to-day basis, the SURF offices are administrated by the Synopsys security department. Once the SURF office is assigned to a customer/EDA vendor, that customer is in charge of authorizing access to his SURF office/lab via coordination with the Synopsys Security Department. The Access Agreement commits the Lab User to the "rules" of the SURF area.

It also records who is allowed to gain entry to the private office. In the case of multiple users, each person must be listed on the Access Agreement to gain entry.

The entry and usage protocols of SURF are straight-forward, allowing for ease of use and administration. Based on the user's need (hardware, platform, memory, disk space, etc.) the Strategic Market Development team SURF coordinator assigns an office/lab to the qualified EDA vendor.

To maintain physical access control to the SURF facility, the Synopsys security department provides photo smart cards protected by pass codes for each individual user. A Synopsys security officer programs the keypad with a unique seven-digit numeric code for each SURF user, and the seven-digit code is provided to the user in a sealed envelope.

Designated movement around the Synopsys campus is strictly enforced. SURF users' smart cards are bright orange, indicating access only to the SURF facility. All other areas are off limits to SURF users.

Users come and go through the outside entrance for the duration of their lab use. During business hours (Monday - Friday, 8 a.m. to 5 p.m.) lab users can also come through the lobby of Building A to get into the lab. There is no need to check back in each time entry is desired.

To eliminate any chance of unauthorized access each time a company is assigned to a SURF lab office, a security officer resets the codes and assigns new unique seven-digit codes to the SURF lab user(s). The SURF area is monitored by security cameras and guards.

The SURF badges and access codes to the private offices are reset at the end of a designated period. This will occur automatically so extensions to scheduled time must be prepared and executed with enough advance notice to prevent code expiration and are subject to open and available lab time.

The bottom line: Once the SURF private room is assigned to a company, that company owns the room. If the company brings a customer or a Synopsys employee to its private room, the guest must be escorted, and if necessary, must have completed the appropriate non-disclosure agreements.

Electronically speaking, the security of SURF users' data is ensured through isolation and a self-service data scrubbing protocol built into the system. It can only really be neutralized through fairly extreme neglect. SURF offices are not on any network. Users can't get e-mail at a SURF facility — it is completely offline.

Each time a SURF coordinator assigns a new company to the SURF private room, he or she re-images the Sun Solaris machine with default images, installs necessary Synopsys software and keys, and creates a new user name and home directory. SURF users load whatever software tools they have brought with them for interoperability testing onto the lab equipment.

When a user is through with his project at the campus, Synopsys security strongly recommends that the IP is deleted from the hard disks before handing over the room after completion of the project. In addition, the SURF lab coordinator deletes the user name and directory, and reformats the hard disk before assigning the room to another company.



Although it has been very successful for resolving user operability issues, Bartleson says, it has also become a venue for important interoperability summits between Synopsys and its competitors.

As the industry matured, Bartleson says, interoperability became a bigger issue for customers using a number of software products to manage and inform their designs. With SURF, Synopsys and its competitors had the use of a venue to respond safely to customer demand that its software work together.

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6 UNITED STATES DISTRICT COURT  
7 NORTHERN DISTRICT OF CALIFORNIA  
8  
9

10  
11 Plaintiff,  
12  
13 v.  
14  
15 Defendant.

No. C  
STIPULATED PROTECTIVE ORDER

16  
17 1. PURPOSES AND LIMITATIONS

18 Disclosure and discovery activity in this action are likely to involve production of confidential,  
19 proprietary, or private information for which special protection from public disclosure and from use  
20 for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties  
21 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The  
22 parties acknowledge that this Order does not confer blanket protections on all disclosures or  
23 responses to discovery and that the protection it affords extends only to the limited information or  
24 items that are entitled under the applicable legal principles to treatment as confidential. The parties  
25 further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates  
26 no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the  
27 procedures that must be followed and reflects the standards that will be applied when a party seeks  
28 permission from the court to file material under seal.

1           2. DEFINITIONS

2                   2.1     Party: any party to this action, including all of its officers, directors,  
3 employees, consultants, retained experts, and outside counsel (and their support staff).

4                   2.2     Disclosure or Discovery Material: all items or information, regardless of the  
5 medium or manner generated, stored, or maintained (including, among other things, testimony,  
6 transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery  
7 in this matter.

8                   2.3     "Confidential" Information or Items: information (regardless of how generated,  
9 stored or maintained) or tangible things that qualify for protection under standards developed under  
10 F.R.Civ.P. 26(c).

11                  2.4     "Highly Confidential – Attorneys' Eyes Only" Information or Items:  
12 extremely sensitive "Confidential Information or Items" whose disclosure to another Party or non-  
13 party would create a substantial risk of serious injury that could not be avoided by less restrictive  
14 means.

15                  2.5     Receiving Party: a Party that receives Disclosure or Discovery Material from a  
16 Producing Party.

17                  2.6     Producing Party: a Party or non-party that produces Disclosure or Discovery  
18 Material in this action.

19                  2.7.    Designating Party: a Party or non-party that designates information or items  
20 that it produces in disclosures or in responses to discovery as "Confidential" or "Highly Confidential  
21 — Attorneys' Eyes Only."

22                  2.8     Protected Material: any Disclosure or Discovery Material that is designated as  
23 "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

24                  2.9.    Outside Counsel: attorneys who are not employees of a Party but who are  
25 retained to represent or advise a Party in this action.

26                  2.10    House Counsel: attorneys who are employees of a Party.

27                  2.11    Counsel (without qualifier): Outside Counsel and House Counsel (as well as  
28 their support staffs).

1           2.12 Expert: a person with specialized knowledge or experience in a matter  
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness  
3 or as a consultant in this action and who is not a past or a current employee of a Party or of a  
4 competitor of a Party's and who, at the time of retention, is not anticipated to become an employee of  
5 a Party or a competitor of a Party's. This definition includes a professional jury or trial consultant  
6 retained in connection with this litigation.

7           2.13 Professional Vendors: persons or entities that provide litigation support  
8 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;  
9 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
10 subcontractors.

### 11 12           3. SCOPE

13           The protections conferred by this Stipulation and Order cover not only Protected Material (as  
14 defined above), but also any information copied or extracted therefrom, as well as all copies,  
15 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by  
16 parties or counsel to or in court or in other settings that might reveal Protected Material.

### 17 18           4. DURATION

19           Even after the termination of this litigation, the confidentiality obligations imposed by this Order  
20 shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise  
21 directs.

### 22 23           5. DESIGNATING PROTECTED MATERIAL

24           5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
25 or non-party that designates information or items for protection under this Order must take care to  
26 limit any such designation to specific material that qualifies under the appropriate standards. A  
27 Designating Party must take care to designate for protection only those parts of material, documents,  
28 items, or oral or written communications that qualify – so that other portions of the material,

1 documents, items, or communications for which protection is not warranted are not swept  
2 unjustifiably within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
4 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to  
5 unnecessarily encumber or retard the case development process, or to impose unnecessary expenses  
6 and burdens on other parties), expose the Designating Party to sanctions.

7 If it comes to a Party's or a non-party's attention that information or items that it  
8 designated for protection do not qualify for protection at all, or do not qualify for the level of  
9 protection initially asserted, that Party or non-party must promptly notify all other parties that it is  
10 withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
12 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material  
13 that qualifies for protection under this Order must be clearly so designated before the material is  
14 disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (apart from transcripts of depositions  
17 or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL"  
18 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top of each page that  
19 contains protected material. If only a portion or portions of the material on a page qualifies for  
20 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
21 appropriate markings in the margins) and must specify, for each portion, the level of protection being  
22 asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
23 ONLY").

24 A Party or non-party that makes original documents or materials available for  
25 inspection need not designate them for protection until after the inspecting Party has indicated which  
26 material it would like copied and produced. During the inspection and before the designation, all of  
27 the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –  
28 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants

1 copied and produced, the Producing Party must determine which documents, or portions thereof,  
2 qualify for protection under this Order, then, before producing the specified documents, the  
3 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY  
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top of each page that contains Protected  
5 Material. If only a portion or portions of the material on a page qualifies for protection, the  
6 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
7 markings in the margins) and must specify, for each portion, the level of protection being asserted  
8 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

9 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
10 that the Party or non-party offering or sponsoring the testimony identify on the record, before the  
11 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify any  
12 portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
13 ONLY.” When it is impractical to identify separately each portion of testimony that is entitled to  
14 protection, and when it appears that substantial portions of the testimony may qualify for protection,  
15 the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before  
16 the deposition or proceeding is concluded) a right to have up to 20 days to identify the specific  
17 portions of the testimony as to which protection is sought and to specify the level of protection being  
18 asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).  
19 Only those portions of the testimony that are appropriately designated for protection within the 20  
20 days shall be covered by the provisions of this Stipulated Protective Order.

21 Transcript pages containing Protected Material must be separately bound by  
22 the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or  
23 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-  
24 party offering or sponsoring the witness or presenting the testimony.

25 (c) for information produced in some form other than documentary, and for  
26 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
27 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or  
28 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information

1 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected  
2 portions, specifying whether they qualify as “Confidential” or as “Highly Confidential – Attorneys’  
3 Eyes Only.”

4           5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
5 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’ Eyes  
6 Only” does not, standing alone, waive the Designating Party’s right to secure protection under this  
7 Order for such material. If material is appropriately designated as “Confidential” or “Highly  
8 Confidential – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party,  
9 on timely notification of the designation, must make reasonable efforts to assure that the material is  
10 treated in accordance with the provisions of this Order.

## 11 12           6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13           6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s  
14 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
15 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its  
16 right to challenge a confidentiality designation by electing not to mount a challenge promptly after the  
17 original designation is disclosed.

18           6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating  
19 Party’s confidentiality designation must do so in good faith and must begin the process by conferring  
20 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for  
21 the Designating Party. In conferring, the challenging Party must explain the basis for its belief that  
22 the confidentiality designation was not proper and must give the Designating Party an opportunity to  
23 review the designated material, to reconsider the circumstances, and, if no change in designation is  
24 offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next  
25 stage of the challenge process only if it has engaged in this meet and confer process first.

26  
27           6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality  
28 designation after considering the justification offered by the Designating Party may file and serve a



1 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that  
2 identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion  
3 must be accompanied by a competent declaration that affirms that the movant has complied with the  
4 meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity  
5 the justification for the confidentiality designation that was given by the Designating Party in the meet  
6 and confer dialogue.

7 The burden of persuasion in any such challenge proceeding shall be on the Designating  
8 Party. Until the court rules on the challenge, all parties shall continue to afford the material in  
9 question the level of protection to which it is entitled under the Producing Party's designation.

## 10 11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed  
13 or produced by another Party or by a non-party in connection with this case only for prosecuting,  
14 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
15 the categories of persons and under the conditions described in this Order. When the litigation has  
16 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL  
17 DISPOSITION).

18 Protected Material must be stored and maintained by a Receiving Party at a location  
19 and in a secure manner that ensures that access is limited to the persons authorized under this Order.

20 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
21 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose  
22 any information or item designated CONFIDENTIAL only to:

23 (a) the Receiving Party's Outside Counsel of record in this action, as well as  
24 employees of said Counsel to whom it is reasonably necessary to disclose the information for this  
25 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached  
26 hereto as Exhibit A;

27 (b) the officers, directors, and employees (including House Counsel) of the  
28 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed

the "Agreement to Be Bound by Protective Order" (Exhibit A);

(c) experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author of the document or the original source of the information.

### 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

*[(b) – Optional – as deemed appropriate in case-specific circumstances:*

House Counsel of a Receiving Party (1) who has no involvement in competitive decision-making or in patent prosecutions involving \_\_\_\_\_ [specify subject matter areas], (2) to whom disclosure is reasonably necessary for this litigation, and (3) who has signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(c) Experts (as defined in this Order) (1) to whom disclosure is reasonably

1 necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order"  
 2 (Exhibit A), [*Optional*: and (3) as to whom the procedures set forth in paragraph 7.4, below, have  
 3 been followed];

4 (d) the Court and its personnel;

5 (e) court reporters, their staffs, and professional vendors to whom disclosure is  
 6 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by  
 7 Protective Order" (Exhibit A); and

8 (f) the author of the document or the original source of the information.

9 [ *Optional*: 7.4 Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL –  
 10 ATTORNEYS' EYES ONLY" Information or Items to "Experts"

11 (a) Unless otherwise ordered by the court or agreed in writing by the  
 12 Designating Party, a Party that seeks to disclose to an "Expert" (as defined in this Order) any  
 13 information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
 14 ONLY" first must make a written request to the Designating Party that (1) identifies the specific  
 15 HIGHLY CONFIDENTIAL information that the Receiving Party seeks permission to disclose to the  
 16 Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary  
 17 residence, (3) attaches a copy of the Expert's current resume, (4) identifies the Expert's current  
 18 employer(s), (5) identifies each person or entity from whom the Expert has received compensation for  
 19 work in his or her areas of expertise or to whom the expert has provided professional services at any  
 20 time during the preceding five years, and (6) identifies (by name and number of the case, filing date,  
 21 and location of court) any litigation in connection with which the Expert has provided any  
 22 professional services during the preceding five years.

23 (b) A Party that makes a request and provides the information specified in the  
 24 preceding paragraph may disclose the subject Protected Material to the identified Expert unless,  
 25 within seven court days of delivering the request, the Party receives a written objection from the  
 26 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

27 (c) A Party that receives a timely written objection must meet and confer with  
 28 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by

1 agreement. If no agreement is reached, the Party seeking to make the disclosure to the Expert may  
2 file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
3 applicable) seeking permission from the court to do so. Any such motion must describe the  
4 circumstances with specificity, set forth in detail the reasons for which the disclosure to the Expert is  
5 reasonably necessary, assess the risk of harm that the disclosure would entail and suggest any  
6 additional means that might be used to reduce that risk. In addition, any such motion must be  
7 accompanied by a competent declaration in which the movant describes the parties' efforts to resolve  
8 the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and sets  
9 forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

10 In any such proceeding the Party opposing disclosure to the Expert shall bear  
11 the burden of proving that the risk of harm that the disclosure would entail (under the safeguards  
12 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

13  
14 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
15 LITIGATION.

16 If a Receiving Party is served with a subpoena or an order issued in other litigation  
17 that would compel disclosure of any information or items designated in this action as  
18 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the  
19 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and  
20 in no event more than three court days after receiving the subpoena or order. Such notification must  
21 include a copy of the subpoena or court order.

22 The Receiving Party also must immediately inform in writing the Party who caused the  
23 subpoena or order to issue in the other litigation that some or all the material covered by the  
24 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must  
25 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that  
26 caused the subpoena or order to issue.

27 The purpose of imposing these duties is to alert the interested parties to the existence  
28 of this Protective Order and to afford the Designating Party in this case an opportunity to try to

1 protect its confidentiality interests in the court from which the subpoena or order issued. The  
2 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its  
3 confidential material – and nothing in these provisions should be construed as authorizing or  
4 encouraging a Receiving Party in this action to disobey a lawful directive from another court.  
5

6 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
8 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,  
9 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized  
10 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the  
11 person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d)  
12 request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that  
13 is attached hereto as Exhibit A.  
14

15 10. FILING PROTECTED MATERIAL. Without written permission from the Designating  
16 Party or a court order secured after appropriate notice to all interested persons, a Party may not file  
17 in the public record in this action any Protected Material. A Party that seeks to file under seal any  
18 Protected Material must comply with Civil Local Rule 79-5.  
19

20 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the Producing  
21 Party, within sixty days after the final termination of this action, each Receiving Party must return all  
22 Protected Material to the Producing Party. As used in this subdivision, “all Protected Material”  
23 includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing  
24 any of the Protected Material. With permission in writing from the Designating Party, the Receiving  
25 Party may destroy some or all of the Protected Material instead of returning it. Whether the  
26 Protected Material is returned or destroyed, the Receiving Party must submit a written certification to  
27 the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day  
28 deadline that identifies (by category, where appropriate) all the Protected Material that was returned

1 or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts,  
 2 compilations, summaries or other forms of reproducing or capturing any of the Protected Material.  
 3 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,  
 4 motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such  
 5 materials contain Protected Material. Any such archival copies that contain or constitute Protected  
 6 Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

7  
 8 12. MISCELLANEOUS

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person  
 10 to seek its modification by the Court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
 12 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
 13 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
 14 Party waives any right to object on any ground to use in evidence of any of the material covered by  
 15 this Protective Order.

16  
 17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

18 DATED: \_\_\_\_\_  
 19 Attorneys for Plaintiff

20 DATED: \_\_\_\_\_  
 21 Attorneys for Defendant

22 PURSUANT TO STIPULATION, IT IS SO ORDERED.

23 DATED: \_\_\_\_\_  
 24 [name of judge]  
 25 United States District/Magistrate Judge  
 26  
 27  
 28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of \_\_\_\_\_ **[insert formal name of the case and the number and initials assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]





IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE

1  
2  
3  
4 RICOH COMPANY, LTD., : CIVIL ACTION  
5 Plaintiff :  
6 vs. :  
7 AEROFLEX INCORPORATED, AMI :  
8 SEMICONDUCTOR, INC., MATROX :  
9 ELECTRONIC SYSTEMS LTD., :  
MATROX GRAPHICS INC., MATROX :  
INTERNATIONAL CORP., and :  
MATROX TECH, INC., :  
10 Defendants : NO. 03-103 (GMS)  
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Wilmington, Delaware  
Friday, May 16, 2003  
2:00 o'clock, p.m.

BEFORE: HONORABLE GREGORY M. SLEET, U.S.D.C.J.

APPEARANCES:

RICHARDS, LAYTON & FINGER, P.A.  
BY: ROBERT W. WHETZEL, ESQ. and  
STEVEN J. FINEMAN, ESQ.

-and-

Valerie J. Gunning  
Official Court Reporter

1 APPEARANCES (Continued):

2 DICKSTEIN, SHAPIRO, MORIN & OSHINSKY  
3 BY: GARY M. HOFFMAN, ESQ. and  
4 EDWARD A. MEILMAN, ESQ.  
(Washington, D.C.)

5 Counsel for Plaintiff

6 CONNOLLY, BOVE, LODGE & HUTZ LLP  
7 BY: FRANCIS DiGIOVANNI, ESQ.

8 -and-

9 HOWREY, SIMON, ARNOLD & WHITE  
10 BY: TERESA M. CORBIN, ESQ.  
(Menlo Park, California)

11 Counsel for Defendants

12 MacPHERSON, KWOK, CHEN & HEID LLP  
13 BY: ALAN H. MacPHERSON, ESQ. (VIA TELEPHONE)  
(San Jose, California)

14 Counsel for Defendat AMI Semiconductor

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P R O C E E D I N G S

(Proceedings commenced in chambers, beginning at  
2:00 p.m.)

THE COURT: Good afternoon.

MR. WHETZEL: Your Honor, may I introduce  
Gary Hoffman from Dickstein Shapiro and his partner,  
Ed Meilman.

MR. DiGIOVANNI: This is Teresa Corbin of Howrey  
Simon in California.

And we also expected to have --

THE COURT: We have him on the phone.

MR. DiGIOVANNI: Alan MacPherson representing  
AMI.

THE COURT: Yes.

Your name, counsel?

MR. FINEMAN: Steve Fineman from Richards  
Layton.

MR. WHETZEL: I'm sorry, your Honor.

THE COURT: That's all right.

Mr. MacPherson?

MR. MacPHERSON: Yes.

THE COURT: Hi. Everyone is here. This is Judge

1 Sleet. We're going to get right into the business of  
2 scheduling.

3 I have received the joint status report and the  
4 competing proposals for schedule and I have taken the liberty  
5 of making some modifications.

6 My approach to scheduling is not altogether  
7 rigid, and I will discuss matters with counsel and make  
8 adjustments that I think are appropriate to make, depending  
9 upon what counsel advise me and whether I'm convinced that  
10 the adjustment should be made.

11 So with that sort of a proviso, why don't we  
12 begin.

13 You pretty much don't agree on anything with  
14 regard to actual scheduling other than the cutoff, and that's  
15 not totally agreed for discovery. I think plaintiff proposes  
16 that all discovery be completed by the March 15, '04 date.  
17 The defendants resist that proposition and want to stage  
18 discovery, which the Court is inclined to do.

19 But if the plaintiff really feels -- plaintiff on  
20 this side --

21 MR. HOFFMAN: Yes, your Honor.

22 THE COURT: -- feels adamant about this, I'm  
23 willing to hear you on it.

24 MR. HOFFMAN: Well, we had thought it was  
25 appropriate, looking at it again this morning, your Honor,

1 we're willing to stage discovery.

2 We would like to start the opening expert reports  
3 a little bit earlier. The defendants have proposed April  
4 9th. We would suggest April 2 and rebuttal April 16th and  
5 the expert reports.

6 THE COURT: Well, the opening actually based on  
7 the schedule I have crafted here would be 3/22.

8 MR. HOFFMAN: Okay.

9 THE COURT: With the rebuttals being 4/23.

10 Let me jump to the back end of this schedule.  
11 This case is going to come to trial on October 11 of '04.  
12 Okay?

13 We will have a pretrial order due date of 8/16  
14 and we will have a pretrial conference here in this building  
15 on September the 13th at 9:30, commencing at 9:30.

16 We can now go back to the beginning. That will  
17 at least help give you some context for what we're going to  
18 talk about here.

19 MS. CORBIN: Right.

20 THE COURT: Go ahead.

21 MS. CORBIN: Your Honor, I think there are some  
22 things that I should apprise the Court of.

23 THE COURT: Okay.

24 MS. CORBIN: In addition to representing the  
25 defendants in this suit, I am representing Synopsis, which

1 is a company that is in the design synthesis business also  
2 in California.

3 THE COURT: Not a party to this action?

4 MS. CORBIN: They're not a party to this  
5 action. They filed a suit in the Northern District of  
6 California yesterday against Ricoh, basically on one of  
7 the same patents, the one patent that's in this suit.

8 THE COURT: The '432 patent?

9 MS. CORBIN: Yes. Essentially, it had  
10 come to our attention that the statement had been made  
11 to Mr. MacPherson, and this is the only indication  
12 we have because we cannot glean anything about the  
13 infringement allegations from the complaint that the  
14 bases of the complaint is really these defendants use of a  
15 product called Design Compiler that Synopsis manufactures  
16 and sells.

17 It came to our attention and then again late  
18 last week that, in fact, RICO was engaged in a worldwide  
19 campaign of sending letters to our customers. We got copies  
20 of some of those letters which RICO had sent to additional of  
21 the customers and indicated in the letter that that should be  
22 kept confidential, but it has come to Synopsis' attention,  
23 and they felt that it was critical to take the bull by the  
24 horns if that, in fact, is the case, that the genesis of this  
25 case is a Synopsis part.

1                   And they are in California and a large number of  
2 the players, witnesses and the documents are there as well.

3                   And the letters that have been going out to the  
4 other customers mention another patent that is a continuation  
5 in part of the patent we have in suit here. Synopsis does  
6 intend and had hoped to do that by today, but probably will  
7 not happen until Monday to file the motion to stay and/or  
8 transfer this customer case.

9                   THE COURT: To stay the case out in California?

10                  MS. CORBIN: No. To stay this case or to  
11 transfer this case to California.

12                  THE COURT: On what basis are they going  
13 to file a motion in this case? I'm not certain that I  
14 exactly --

15                  MS. CORBIN: I'm sorry. The defendants, the  
16 defendants in this case would file a motion to stay.

17                  THE COURT: You said Synopsis.

18                  MS. CORBIN: I apologize. I'm representing those  
19 parties as well, and they feel that if the genesis of this  
20 complaint is really the Design Compiler part of Synopsis,  
21 that that issue could be handled in California and would  
22 resolve the issues here.

23                  THE COURT: Sure. Sure. I understand.

24                  Well, we can talk about this a little bit. It  
25 strikes me that there's no prejudice to either party since I

1 have you all here in embarking on a schedule in any event  
2 because discovery has to be done.

3 MS. CORBIN: I wanted to apprise you of the  
4 facts. I would have mentioned it in the status report. At  
5 that time it had been unresolved.

6 THE COURT: Certainly the Court recognizes should  
7 the motion to transfer be filed and should I rule that the  
8 case should be transferred, it will then come under the  
9 rules -- this is in the Northern District?

10 MS. CORBIN: Yes.

11 THE COURT: Which rules are very different  
12 from this Court's and you would embark upon an entirely  
13 new schedule, but I don't think you'd be any the worse  
14 for wear.

15 MS. CORBIN: Absolutely. I think we should  
16 proceed.

17 THE COURT: Okay. Counsel, anything further to  
18 that?

19 MR. HOFFMAN: I guess there's no point in getting  
20 into a debate over the lawsuit that they just filed.  
21 Obviously, I just became aware of it. However, we've made no  
22 threats against Synopsis. We'll be moving to dismiss the  
23 lawsuit.

24 THE COURT: Why am I not surprised?

25 MR. HOFFMAN: There's no reason for my trying to



1 explain the issues at this point. That will be an issue that  
2 will be out there in California.

3 THE COURT: Well, apparently.

4 Okay. So with that, we can now go ahead and see  
5 what we can come up with here.

6 I see a difference in the Rule 26(a) time that  
7 you've -- deadline you've set. I had picked 5:30.

8 Is there a particular reason the defendants feel  
9 June 13 is more appropriate than 5:30? I thought we should  
10 let's get on with it.

11 MS. CORBIN: If the Court is inclined that way,  
12 we will do our best to do that.

13 THE COURT: I'm inclined to do that. I tried to  
14 sort of pick a compromise date as to amendment and joinder  
15 and I selected July 30. I don't know if anybody feels real  
16 strongly about that one way or the other.

17 MR. HOFFMAN: That's fine, your Honor.

18 THE COURT: All right. As to the election and  
19 the production, the election of reliance on advice of counsel  
20 and production of those opinions, the defendant proposes ten  
21 days after the Markman. That's the first time I've seen that  
22 type of proposal on this.

23 I'm not quite certain why you would want --  
24 the Markman, by the way -- well, we'll just move along  
25 in some order here, but perhaps you could tell me why you

1 feel that.

2 MS. CORBIN: Well, primarily it's just the  
3 reason, your Honor, that to rely on advice of counsel in a  
4 waiver of the privilege.

5 The privilege is important, so if the defendants  
6 feel that they would not choose to do that if it were not  
7 necessary to waive that privilege and that it's hard to know  
8 at the beginning of this case, you know, what the allegations  
9 are, but once there was a claim construction sort of defining  
10 the scope of this patent, then the defendants could make an  
11 informed judgment on that basis as to whether they really  
12 wanted to waive their privilege or not.

13 THE COURT: I don't think that, for you  
14 to make an order, and I will let plaintiff make his  
15 own argument, but I'm having difficulty, a little bit  
16 of difficulty with understanding why you couldn't make  
17 an informed judgment prior to the Court's disposition of  
18 the Markman question. I mean, it seems to me that if we  
19 get far along enough in discovery, in the discovery process,  
20 I mean, that's really the basis from which you are going to  
21 make that call one way or it shouldn't have anything to do  
22 with the call that I make on, you know, the construction of  
23 elements.

24 MR. HOFFMAN: Your Honor, you stated our  
25 concern. We agree.

1 THE COURT: Now, I'm going to distress you  
2 a little bit, both of you, because I'm going to set that  
3 date, by the way, at 12/9, which I think gives counsel  
4 ample time.

5 MS. CORBIN: Discovery?

6 THE COURT: No.

7 MS. CORBIN: Oh.

8 THE COURT: I'm shifting on you a little bit.

9 MS. CORBIN: Okay.

10 THE COURT: The deadline for advice on reliance.

11 MS. CORBIN: Okay.

12 THE COURT: But only a month after will be  
13 the fact discovery cutoff. That gives you a little less  
14 than eight months.

15 This is a one-patent case. I see no reason  
16 why counsel can't, with a diligent effort, get this  
17 case discovered by January the 9th, but I will hear  
18 from you.

19 MS. CORBIN: That's fact discovery?

20 THE COURT: Yes. Fact discovery.

21 MR. HOFFMAN: That's fine with us, your Honor.

22 THE COURT: Did you want to be heard further on  
23 that?

24 MS. CORBIN: You know, your Honor, if that's what  
25 you feel, we will do our best to accommodate that --

1 THE COURT: I don't want to set unrealistic  
2 dates.

3 MS. CORBIN: To the extent we're unable to  
4 accomplish everything we need, if we could come back to  
5 court.

6 THE COURT: There's not going to be a lot of  
7 room.

8 MS. CORBIN: Okay.

9 THE COURT: There's not going to be a  
10 lot of room. It's a fairly tight schedule as I see  
11 it. That date is based on the Court's considerable  
12 experience even in the short time that I've been here  
13 in this area and understanding generally how long it  
14 takes to do things.

15 I am willing, if you were to tell me there's  
16 going to be a lot of foreign discovery and there are  
17 going to be language problems, something along those  
18 lines, I might hear you, but I just don't see the need  
19 to spend ten months discovering in a one-patent  
20 case.

21 MS. CORBIN: Well, your Honor, that was  
22 part of the issue that I would get into, the phase when  
23 we talk about the appropriate scheduling, Markman and the  
24 claims construction.

25 Part of our reason, the defendants' reason for

1 wanting an early hearing on that is that we do believe that  
2 resolution of that issue has the potential to eliminate a  
3 large amount of third-party discovery related to the prior  
4 art system.

5 THE COURT: I'm going to give you a Markman  
6 earlier than the one you've asked for.

7 MS. CORBIN: Oh, okay. But we do have the  
8 inventors here and it's not completely clear to us yet, but  
9 it appears to us they're both in Japan. So we do have some  
10 foreign language issues and some international depositions  
11 and then, depending on where we end up with the claims  
12 construction, there really are a large number of people in  
13 this field who are involved in the early eighties in  
14 developing design synthesis software.

15 THE COURT: To the extent that there needs  
16 to be an extension of the fact discovery deadline to  
17 accommodate the deposition of some individuals, to the  
18 extent that that won't impact the case-dispositive  
19 motion schedule, I'm willing to be flexible.

20 MS. CORBIN: Okay.

21 THE COURT: Right up to the time of trial,  
22 quite frankly, and even after, if necessary. But this is a  
23 parochial concern --

24 MS. CORBIN: Okay.

25 THE COURT: -- that I have, that you should all

1 have. That is, giving the Court sufficient time to  
2 appropriately address any dispositive motions that I permit  
3 to be filed.

4 MS. CORBIN: All right. We'll do our best  
5 to live with January 9.

6 THE COURT: All right. Then that gets us  
7 into Markman and to that process.

8 I'm going to require that you meet and  
9 confer by the 9th day of January for the purpose of  
10 identifying elements in dispute and narrowing that  
11 field of conflict.

12 That's just a deadline. You can meet before  
13 then, whatever.

14 MR. HOFFMAN: Okay.

15 THE COURT: And, by the way, I'm going to  
16 impose on plaintiff to prepare this schedule, because there  
17 are going to be some dates that you will probably need to  
18 work out on your own.

19 MR. WHETZEL: We would be glad to, your Honor.

20 THE COURT: I'd like the exchange of initial  
21 claim charts to be completed by January the 16th. This is  
22 going to be rather rigorous here. I would like final claim  
23 charts, joint final submission by the close of business a  
24 week later, January 23. And that should include citations to  
25 the intrinsic record.

1 Just to talk a little bit about Markman, the  
2 process, I'm going to be interested to hear from you as to  
3 how much time you think it's going to take, but I know that  
4 it's early in the process. I wouldn't imagine that we need  
5 to set aside more than a day. I don't take extrinsic  
6 evidence in my Markman process.

7 MR. HOFFMAN: We would agree with your Honor.  
8 A day, maximum, should be fine.

9 THE COURT: Okay. Do you agree.

10 MS. CORBIN: Yes, I agree.

11 THE COURT: All right. Then that helps.

12 I would like the Markman briefing process to be  
13 completed by February the 6th. An opening and an answer, or  
14 you can simultaneously exchange. You need to join the  
15 issues. I would suggest an opening and an answer.

16 We'll hold our Markman hearing on February the  
17 20th, beginning at 9:30.

18 MS. CORBIN: Your Honor, if I could?

19 THE COURT: Yes.

20 MS. CORBIN: So in your schedule, January 9th,  
21 the Markman process will begin the same day as the fact  
22 discovery closes?

23 THE COURT: Yes.

24 MS. CORBIN: Which does not address, and  
25 that was the argument I was trying to make, the issue

1 that we have, in that we thought that starting that  
2 process earlier may eliminate a large part of what would  
3 be third-party discovery, and that was why in the defendants'  
4 proposal, we had started that process in August of this  
5 year and had hoped to get to that well in advance of the  
6 close of discovery so that we could make a decision and  
7 not be bothering these third parties with depositions  
8 and document production and so on should it prove to be  
9 unnecessary.

10 THE COURT: Well, you still both -- I mean, you  
11 want to have your Markman hearing?

12 MS. CORBIN: Yes.

13 THE COURT: I'm sorry. I'm incorrect. On  
14 October 17th. We can talk about that.

15 I am really generally not amenable anymore  
16 to doing early Markmans. I've been told that early Markmans  
17 will -- you know, Judge, we'll settle the case, we'll -- it  
18 will do this for the case, it will do that and, inevitably,  
19 I've been very disappointed with that. And I don't want to  
20 be disappointed again because it just makes me unhappy and  
21 you don't want me to be unhappy.

22 MS. CORBIN: No.

23 THE COURT: But I will -- if counsel want to talk<sup>4</sup>  
24 about that with me and you convince me that, you know, Judge,  
25 it's really going to help us, this will really help us set



1 the direction of the case, may dispose of it, I'm not  
2 unwilling to address Markman early. But I'm also not willing  
3 to have the discovery process continues and have you come  
4 back and say, Judge, there's additional discovery. We need  
5 to reopen the Markman process. We've changed our position.  
6 And it may be a perfectly legitimate, not dilatory tactic,  
7 request.

8 MS. CORBIN: Right. Although I would say to  
9 your Honor that discovery is really not so relevant to  
10 Markman, since the Markman is, as you said, based on the  
11 intrinsic evidence and the --

12 THE COURT: I have lawyers coming in and  
13 talking about prosecution history all the time and prior  
14 art and things of that nature in Markman. They do,  
15 but --

16 MS. CORBIN: The file history is available  
17 to everybody presently.

18 THE COURT: It is.

19 MS. CORBIN: And presumably, the prior art as  
20 well.

21 MR. HOFFMAN: Your Honor, one of the reasons why,  
22 in this case -- we agree with what your Honor is saying, but  
23 in addition in this case, so far we've identified one claim.  
24 There are 20 claims in the patent. We've identified at least  
25 one claim that we believe infringe, that we have alleged

1 infringe. There may be many other claims. We won't know  
2 until we get discovery.

3 You know, Claim 13, I've identified this to  
4 Ms. Corbin, is being infringed. That's our position at  
5 least.

6 There are a total of five independent claims,  
7 20 claims total. If we have an early Markman before  
8 we've taken discovery, we're going to wind up with two  
9 Markman hearings. It just does not make any sense in  
10 this case.

11 THE COURT: Go ahead.

12 MS. CORBIN: Well, the whole -- the  
13 complaint -- the patent as a whole only has four  
14 independent claims, but using Claim 13 specifically,  
15 because that's the one you reference that you said  
16 was the basis at least at this point in time for the  
17 allegation of infringement, we believe there are claim  
18 elements there which if defined as commensurate with the  
19 scope of what is described in the specification would be  
20 straightforward, and if the Court were to conclude that,  
21 then it would eliminate, as we're saying, a large part  
22 of this third-party discovery.

23 If, in fact, plaintiff is going to read  
24 that specification or it's going to be its position to  
25 this Court that that claim is broader and covers all types

1 of design synthesis, then we are really going to have to do  
2 heavy duty third-party discovery, and many parties were  
3 developing this design synthesis software in the early  
4 eighties.

5 We believe if they construe it on the broader  
6 construction, we'll have to engage in this third-party  
7 discovery from quite a number of individuals and companies  
8 that were developing that material so we can mount our  
9 defense and show the Court that if construed in that broader  
10 way, that was already in the public domain in the early  
11 1980's, well in advance of the filing of the application that  
12 resulted in this patent.

13 And that was really our concern because, you  
14 know, we conduct third-party discovery all the time but we  
15 try to tailor it.

16 Obviously, these defendants will have to do  
17 it the best they can to mount their defense and it will  
18 entail a large expense and time consumption of parties and  
19 companies that really have no interest in the outcome of  
20 this suit.

21 THE COURT: Counsel, your opponent says in  
22 addition to bothering people unnecessarily, you are going  
23 to spend a lot of money you may not need to spend.

24 MR. HOFFMAN: Your Honor, I think throughout  
25 all of this we're going to be able to focus issues and I

1 hope keep things under control.

2 Both sides have agreed on 240 hours on the  
3 number of depositions that the parties can do.

4 THE COURT: All right.

5 MR. HOFFMAN: What we're going to do is wind  
6 up with multiple Markman hearings, which really makes no  
7 sense at all.

8 There are five independent claims. We just wind  
9 up with having to deal with other claims later on as we get  
10 additional discovery.

11 The arguments I hear Ms. Corbin making are  
12 arguments every defendant can make in every single case.  
13 They're no different -- this is no different than any other  
14 case.

15 THE COURT: If you go through the process and  
16 you determine jointly that you need to -- that it would make  
17 sense to come to the Court and ask for an early Markman with  
18 assurances that we're not going to come back and revisit  
19 Markman, I will certainly consider that request and see if we  
20 can insert you somewhere. But right now I do have this  
21 nagging concern about having to duplicate effort and I really  
22 don't want to leave that potential for duplication out  
23 there.

24 But I understand what you are saying and I  
25 certainly am a proponent of saving money.

1 MS. CORBIN: It's just not my experience,  
2 your Honor, that I've ever had two Markman hearings in  
3 any case I've been involved in. So it's often the case,  
4 and often in the Northern District, we have earlier Markman  
5 hearings, and I have found in my experience that it is  
6 helpful in at least narrowing the scope for both the  
7 fact and the expert discovery, but primarily this third-party  
8 discovery, which we know here in this particular case is  
9 going to be a big issue.

10 THE COURT: With all due respect to the  
11 Northern District, and they certainly are vastly experienced  
12 in this area, not more experienced than we are, but vastly  
13 experienced, we have a different view. I have a different  
14 view of the approach to patent cases than was taken in the  
15 Northern District generally.

16 I respect their view, but it does not suit what  
17 we believe to be the needs and the approach of litigants and  
18 the Court in this district.

19 MS. CORBIN: Okay.

20 THE COURT: But, again, if it seems that  
21 they are compelling reasons that serve the interests  
22 of all, and I do include the Court in that, to have an  
23 earlier Markman process and an earlier Markman hearing  
24 than the one the Court is presently going to set, I will  
25 consider that.

1 MS. CORBIN: Okay.

2 THE COURT: Okay?

3 MR. HOFFMAN: Your Honor, if I can just turn back  
4 to one point.

5 THE COURT: Yes.

6 MR. HOFFMAN: I believe the hearing date you set  
7 was February 20th.

8 THE COURT: Yes.

9 MR. HOFFMAN: Unfortunately, I don't have  
10 my calendar in front of me, but I believe that's a that's  
11 the week I'm supposed to be on vacation. I booked a  
12 vacation with a number of other couples, my wife and  
13 myself.

14 THE COURT: All right.

15 MR. HOFFMAN: If it would be possible to move  
16 that one week later, I'd appreciate it, just as a personal  
17 item.

18 THE COURT: Gail, would you see if a week  
19 later --

20 MR. HOFFMAN: Yes. I believe the vacation --  
21 and I can check afterwards, your Honor, and let you know, but  
22 if that may be a flexibility.

23 THE COURT: I suspect we can do that.

24 Go ahead.

25 MS. CORBIN: It's a different point, so I didn't

1 want to --

2 THE COURT: All right.

3 MS. CORBIN: My only thought, sticking on the  
4 Markman, is that since the Court is not inclined to give us  
5 the earlier date, I still believe what the plaintiffs  
6 themselves had presented was to have an exchange of the  
7 proposed claim constructions and the meet and confer on that  
8 and sort of the joint -- so you would at least have a  
9 document.

10 It wouldn't be the briefing. It wouldn't  
11 be the Markman hearing, but it would be a document that  
12 set forth the parties' positions and their support for  
13 their constructions and to have that in advance of the  
14 day the discovery is closing I believe would be very  
15 advantageous.

16 THE COURT: I have no difficulty with that.

17 MR. HOFFMAN: I'm sorry, your Honor.

18 THE COURT: Go ahead.

19 MR. HOFFMAN: What I would propose, I can work  
20 out with Ms. Corbin an informal exchange for some time in  
21 September that we can exchange initial positions. You know,  
22 outside of the schedule, I'll be more than glad to work out  
23 something with her.

24 THE COURT: I will go even further to suggest  
25 that -- you're talking about the January 16 exchange date?

1 MS. CORBIN: Yes.

2 THE COURT: Counsel are free to move that up.

3 MS. CORBIN: Okay.

4 THE COURT: And have it reflected in the  
5 schedule.

6 MR. HOFFMAN: All right.

7 THE COURT: That was a deadline.

8 MS. CORBIN: Okay.

9 THE COURT: For me.

10 MR. HOFFMAN: Okay.

11 THE COURT: Now, I have taken, I don't  
12 think it's unique any longer, I think it's probably  
13 well-known, a different position on summary judgment,  
14 my summary judgment process in patent cases now than  
15 most cases simply because it's not a reflection, it does  
16 not mean that I don't like the patent bar. It just  
17 means that these motions can be burdensome. They're  
18 complex. They involve the challenge initially of lay  
19 persons like myself getting up to speed on the technology,  
20 and because of the way I do my approach to scheduling, we  
21 sort of have to get up to speed twice.

22 Judge Robinson, as you know, I think she's  
23 brilliant. She does it one time. But I'm not yet quite  
24 there.

25 So what I require and will require in this case



1 is that by the 8th day of March, you will have submitted  
2 letters to me in support of or in opposition to the filing of  
3 case-dispositive motions. So you can agree on your own  
4 schedule for the exchange of those letters.

5 The letter should not exceed five pages. They're  
6 letter briefs. And that's the process for that.

7 We'll hold a teleconference to discuss those  
8 letters on the 23rd day of March at 9:30.

9 You're in California. That's going to be  
10 a little early for you. Why don't we set that for --  
11 Gail, would you check 11:00 o'clock on the 23rd of  
12 March?

13 DEPUTY CLERK: Okay.

14 THE COURT: Mr. MacPherson, have you been hearing  
15 all of this?

16 MR. MacPHERSON: Yes. I can hear this, your  
17 Honor, very well.

18 THE COURT: All right.

19 MR. MacPHERSON: Except for the last letter  
20 brief. Your voice faded.

21 THE COURT: I'm sorry. March 23.

22 MR. MacPHERSON: The one before that. By March  
23 8th you submit letters, and then that whole sentence got  
24 missed.

25 THE COURT: And then we'll talk about them on the

1 23rd of March.

2 MR. MacPHERSON: Those letters, though, to  
3 summarize the basis for summary judgment motions?

4 THE COURT: Yes. Whichever party is advancing  
5 the proposition that they should be permitted to file,  
6 and certainly there's the opportunity to resist that  
7 proposition.

8 MR. MacPHERSON: Yes. They're just the outline  
9 of what would be presented.

10 THE COURT: I call them letter briefs; you can  
11 call them whatever. But that's right. It's not the brief  
12 itself.

13 MR. MacPHERSON: Okay.

14 MR. HOFFMAN: Your Honor, on that, would  
15 there be one letter from the person advancing it and also  
16 a letter opposing it?

17 THE COURT: Yes.

18 MR. HOFFMAN: Okay. So we'd have to work that  
19 out?

20 THE COURT: Yes. You need to work out an  
21 exchange schedule on your own for that process.

22 MR. HOFFMAN: Okay.

23 THE COURT: All I'm concerned about is that they  
24 get here by the 8th.

25 The dispositive deadline will be April

1 the 2nd. You should anticipate that I will rule  
2 one way or the other on the teleconference. There's  
3 not going to be a post- teleconference writing unless  
4 there's something that really has me scratching my head.  
5 But I will get to you within a few days, even if that's  
6 the case.

7 By the way, you'll get your Markman ruling  
8 within -- no later than 30 days after the hearing. And  
9 the reason that I can promise you that is because  
10 you're not going to get a well-analyzed opinion. What  
11 I'm going to do is issue an order, and it's the process  
12 that I employ until the Federal Circuit tells me to stop  
13 doing it because, as you know, there's de novo review  
14 above and I have been for the last almost five years  
15 now informally polling patent counsel and they're  
16 telling me that they really are not interested in  
17 what I have to say. That's fine. They were very nice  
18 about it.

19 But I really -- at this stage -- go ahead,  
20 Ms. Corbin.

21 MS. CORBIN: That's your practice and that's  
22 fine. I'd be surprised because that wouldn't be my opinion  
23 about the reasoning of the Court.

24 THE COURT: I know some of the judges on the  
25 Federal Circuit do want to hear from us. I feel that those

1 who don't haven't said it. I wonder whether, in terms of  
2 trying to get decisions to our litigants, it seems to me to  
3 make sense. What you really are interested in is how I'm  
4 going to instruct that jury.

5 MR. HOFFMAN: Yes.

6 THE COURT: So that's my practice at this  
7 point.

8 Let's see. So opening expert reports will  
9 be due the 22nd of March; rebuttals a month later, on  
10 the 23rd of April; and the cutoff for expert discovery  
11 will be June 23.

12 Does that give you adequate time to complete  
13 that process?

14 MS. CORBIN: Yes. Yes, your Honor.

15 THE COURT: Okay. Now, I also convene, in  
16 patent cases and other complex civil cases, getting you on  
17 the phone not long before the pretrial conference.

18 On June 30 will be this particular -- I'm  
19 sorry -- July the 7th at 9:30. I'm going to call it  
20 a Daubert/status conference, and I say Daubert because  
21 I want the opportunity to discuss with you in advance of  
22 the pretrial conference any Daubert issues that you  
23 think might be extant, and we can do that at the  
24 teleconference or we could call it a Daubert/motion  
25 in limine conference. Whatever you want -- however you

1 want to style it is fine.

2 I want you to meet and confer on that by the  
3 30th of June and then get me an agenda by July 2nd. It  
4 shouldn't take you long to file an agenda over here by July  
5 2nd as to the Daubert issues and/or in limine issues that we  
6 need to talk about.

7 Of course, you will have the opportunity,  
8 and that's provided in my schedule, in my pretrial  
9 order form. The process for preparing and filing  
10 motions in limine is set out.

11 It essentially requires -- I limit you  
12 to ten a side and it requires you to get them in, I  
13 think it's ten days in advance of the pretrial order  
14 due date, or is it the pretrial conference? Pretrial  
15 order due date.

16 MR. HOFFMAN: Your Honor, if I can just  
17 back up for one second?

18 THE COURT: Yes.

19 MR. HOFFMAN: The conference on July 7th I  
20 believe you had indicated was at 9:30?

21 THE COURT: Yes. Let's back that up again to  
22 11:00 o'clock. I will put that on at 11:00 o'clock. Thank  
23 you.

24 MR. DiGIOVANNI: Your Honor, with regard to  
25 the agenda, do you just want simple, one sentence, or do

1     you want argument?

2                   THE COURT: I don't really want argument  
3     on it.

4                   That reminds me. Let's just chat for a  
5     moment about how you get discovery disputes before  
6     the Court.

7                   I've now adopted a process, it's a three-  
8     tier process, where you initiate your complaint with the  
9     Court about the other side's behavior in a telephone call to  
10    Althea Brown here and she will give you a date for a  
11    teleconference.

12                   48 hours in advance of that date, submit to  
13    me a non-argumentative, no more than two-page agenda letter.  
14    I really do mean non-argumentative. And we'll get on the  
15    phone and talk about it.

16                   And if it's -- it's the type of matter  
17    that it seems to me needs some additional elaboration,  
18    I will let you write a two-page letter, an opening,  
19    answer and reply, or release you immediately to engage in  
20    motions practice. Probably not going to happen, motions  
21    practice. But those three tiers of dispute resolution  
22    are available to you.

23                   I encourage you, I urge you, I implore you,  
24    please try to work out your own discovery disputes. It  
25    really does require significant work, given the number of

1 patent cases, particularly patent cases that each judge in  
2 this district is carrying, and given the fact that we have  
3 one Magistrate Judge and she does not do discovery disputes.  
4 We do our own in one form or another.

5 We each have a different process, but one form or  
6 another, we do them. So it can take up an inordinate amount  
7 of the district judge's time, which I'm trying to guard  
8 against, which is why I've gone to the telephone process.  
9 Hopefully, there's a little trepidation in dialing that  
10 phone.

11 Okay. That's that. I think we've accounted  
12 for all of the important dates in the life of the  
13 case.

14 MR. HOFFMAN: If we could just go back to  
15 the date of the Markman hearing.

16 THE COURT: Yes.

17 DEPUTY CLERK: Judge, it will be March 2nd at  
18 9:30.

19 MR. HOFFMAN: Thank you very much.

20 THE COURT: Glad you reminded me of that.

21 Let's see. Well, let's talk for a moment about,  
22 or maybe more than a moment, about -- we're going to move the  
23 trial date one day. I've been advised that October 11 is  
24 Columbus Day; that's a Federal holiday.

25 Now, counsel have, I think jointly suggested that

1 the Court should set aside 12 days of its calendar to try  
2 this case. Why is that?

3 Start with plaintiff.

4 MR. HOFFMAN: Basically, your Honor, we  
5 had proposed ten. Defendants asked for more. 12. We  
6 said fine.

7 We had thought it would potentially take ten  
8 trial days. It may take less than that.

9 THE COURT: It will.

10 MR. HOFFMAN: In all candor.

11 MS. CORBIN: I could live with the ten. It just  
12 seems like there's five defendants already and it's unclear,  
13 if there are to be any other parties in the case, and we do  
14 think there are going to be a large number of witnesses in  
15 the prior art area.

16 THE COURT: Well, it is really five defendants?  
17 We have Matrox in different --

18 MS. CORBIN: Different entities.

19 I can't answer that question, your Honor. I  
20 just know four of the Matrox entities, separate entities,  
21 each one have been sued. Whether that continues to trial, I  
22 don't know.

23 THE COURT: I understand. I understand that,  
24 whether it continues.

25 Are we going to have different Matrox personnel?



1 I mean, are there really different entities?

2 MS. CORBIN: Yes, there are different distinct  
3 entities.

4 THE COURT: That are functioning, operating  
5 companies?

6 MS. CORBIN: Yes. As I understand it, not  
7 all of those entities, and I didn't write down, so I  
8 can't indicate right now, some of those entities are not  
9 involved and do not use design synthesis tools in their  
10 business, and so I don't really know at this point in time  
11 why they're in this case.

12 THE COURT: Okay. Well, when you say a large  
13 number of witnesses, and I think you were specific to say  
14 prior art witnesses, what do you mean? What do you  
15 anticipate?

16 MS. CORBIN: Well --

17 THE COURT: Or --

18 MS. CORBIN: You mean number?

19 THE COURT: Yes.

20 MS. CORBIN: Well, there were at least  
21 six, seven, possibly eight venues in the early eighties,  
22 where this type of design synthesis software was being  
23 developed.

24 Some of those people now have found themselves,  
25 a lot of them back in California, working for one of the

1 Synopsis competitors and/or have gone into academia and those  
2 folks are found at U.C. Berkley, Stanford and the University  
3 of Southern California.

4 I can't put a number on, at this point on how  
5 many of those people we would find critical to be able to  
6 come forward and describe, you know, their process that they  
7 were engaged in at that time.

8 THE COURT: So you base your estimate,  
9 it's principally on these witnesses, the prior art  
10 witnesses is what you think is going to drive, from your  
11 perspective?

12 MS. CORBIN: From the defendants' point of view,  
13 I think there will be a large number of the witnesses, plus  
14 if it turns out this is really about Design Compiler, you  
15 know, whatever witnesses are going to be testifying as to  
16 that part.

17 THE COURT: Okay.

18 MR. HOFFMAN: Your Honor, I guess our approach,  
19 we just gave an outside estimate on the ten days. In all  
20 candor, as I indicated, I think it's probably likely to take  
21 less than that.

22 THE COURT: Yes. I'm going to set it down for  
23 seven days.

24 MS. CORBIN: Okay.

25 THE COURT: That will, I think, give us ample

1 time to get it done. It will carry us over a weekend.

2 Actually two days, since we're starting on Tuesday.

3 MS. CORBIN: What is your trial schedule, your  
4 Honor?

5 THE COURT: We start at 9:00 o'clock. We try to  
6 keep to the schedule as best we can. We go to 1:00 for  
7 lunch. We take a morning break of 15 minutes. We come back  
8 after an hour for lunch. Then I let the jury go at 4:30. We  
9 have another 15-minute break in the afternoon.

10 Now, theoretically, I think that gives you six  
11 hours a day, but it really never works out that way.

12 MS. CORBIN: Right.

13 THE COURT: It's more like five and a half, five  
14 and 15, somewhere in that neighborhood. I try to keep myself  
15 and everybody else as much on schedule as possible, but we  
16 all know that things happen.

17 MS. CORBIN: And is that a four-day week or  
18 five-day week?

19 THE COURT: Five-day week.

20 MS. CORBIN: Five-day week?

21 THE COURT: Yes. And you'll be on timers,  
22 so you'll be principally responsible for keeping your own  
23 time.

24 I may this time place a limit on the openings  
25 and closings. I had a bad experience recently where I

1 just thought the openings -- they were fine openings. It  
2 was principally the closings. They were very well done,  
3 but they were just a lot longer than they needed or  
4 anybody wanted, I'm sure including the defense counsel  
5 actually.

6 So I'm thinking about that and we'll talk  
7 about that at the pretrial conference and we'll talk  
8 about -- we will have a working pretrial conference. It  
9 will, in all likelihood, take a better part of the day, so  
10 you should be prepared for that.

11 Be prepared at the pretrial conference to  
12 talk to me about jury instructions. I will have read your  
13 jury instructions beforehand. I know that's the last thing  
14 that counsel want to talk about at the pretrial conferences  
15 is jury instructions, but they are so critical. They are  
16 critical in any case, but particularly in patent cases, and  
17 they're so hard fought and it's a contentious process and I  
18 can tell you now, let me preview for you, I'm going to beat  
19 you up about them. I know you don't want to agree, but  
20 you're going to agree. Believe me, you will. We'll get to a  
21 good set of jury instructions that everybody feels good about  
22 so we can have a properly instructed jury, but just a preview  
23 for you.

24 Let's see. I think that, from a scheduling point  
25 of view, pretty much does it. I'm interested in

1 understanding whether there have been any efforts to settle  
2 this case, any discussion along those lines, if there's an  
3 interest in having this matter referred to our Magistrate  
4 Judge.

5 Are you considering another ADR approach or  
6 something?

7 MR. HOFFMAN: From the plaintiff's viewpoint,  
8 your Honor, we're always interested in talking about  
9 settlement. Our interest is licensing. We're not trying to  
10 stop anyone. We're interested in licensing the patent. So  
11 we'd be willing to sit down and talk about settlement, you,  
12 you know, with the defendants here.

13 THE COURT: No proposals have been exchanged  
14 yet?

15 MR. HOFFMAN: No.

16 THE COURT: Are businesspeople talking to one  
17 another?

18 MR. HOFFMAN: Not as of this time, your Honor,  
19 but I would be more than glad to set up a meeting.

20 MS. CORBIN: Synopsis businesspeople attempted to  
21 speak with the business folks at RICO, but we have not been  
22 able to move that forward.

23 MR. HOFFMAN: Well, your Honor, Synopsis is not a  
24 defendant here. We have not made any allegations against  
25 Synopsis, nor do we intend to make any allegations against

1 Synopsis.

2 MS. CORBIN: But is it correct, the basis of the  
3 infringement allegations is the compiler part that Synopsis  
4 makes?

5 MR. HOFFMAN: That is a part of it. It's  
6 the utilization of design compilers, part of the  
7 basis.

8 But our interest is we are willing to sit  
9 down and talk to the defendants here.

10 THE COURT: Okay.

11 MS. CORBIN: It does not seem likely, if that's  
12 the basis of the infringement allegation, your Honor, that a  
13 settlement could really move forward in the absence of  
14 Synopsis. The customers are going to be looking to Synopsis  
15 if that's the basis of the infringement claim to get them out  
16 of this situation and so it seems to me the real party in  
17 interest is, any way you look at it, involving Synopsis in  
18 terms of a settlement posture.

19 MR. HOFFMAN: If the defendants are represented,  
20 we have no objection to Synopsis being included in that  
21 discussion. But our interest is to license the users, the  
22 people who actually make the semiconductors.

23 THE COURT: Okay. Well, let me -- go ahead.

24 MS. CORBIN: The one other thing, your Honor, and  
25 this only came to light to us at the very end of last week

1 and we were continuing to conduct our investigation, but we  
2 had indicated in our status report about amending the  
3 pleadings. We will want to amend the pleadings once we've  
4 lined that up to allege equitable estoppel because it is now  
5 our understanding that RICO had approached Synopsis about  
6 taking licenses to these patents for the Design Compiler  
7 software well over a decade ago and they refused to do so at  
8 that time and they dropped it and they never brought it up  
9 again.

10 In fact, RICO and Synopsis have been business  
11 parties to business deals from then till now, including, I  
12 think, Ricoh is a subscriber customer, licensee under this  
13 Design Compiler part.

14 So it would be these defendants' positions, once  
15 they're able to fully investigate that, that any allegations  
16 that are based on Design Compiler should be equitably  
17 estopped.

18 THE COURT: It does seem that Synopsis should be  
19 at the table somewhere somehow. Maybe not at this table, but  
20 I will leave that to you folks.

21 I would suggest that you have me include a  
22 referral in the scheduling order to the Magistrate Judge.  
23 You can then contact her or she'll contact you. She's very  
24 flexible. And she'll work with you. If you ultimately  
25 decide that you are not going to use her good offices, then

1     you don't.

2                   MS. CORBIN: Right.

3                   THE COURT: But if you decided it would benefit  
4     the process, you do.

5                   MS. CORBIN: Is that a referral to be taken up at  
6     a later time?

7                   THE COURT: I would include it in the scheduling  
8     order. Either you will jointly contact her or she'll reach  
9     out to you. She'll say, you know, what's the status of  
10    things. She's not going to order you to do anything at this  
11    point. You might pencil in a date or something. Maybe you  
12    don't.

13                  MS. CORBIN: Okay.

14                  THE COURT: She'll say we'll set a time and we'll  
15    talk again.

16                  MS. CORBIN: Okay.

17                  THE COURT: But at some point as you move along  
18    in the discovery process, it may occur to you that you want a  
19    neutral to get involved. You are not going to find a more  
20    able neutral for free, for sure, but even if you paid for  
21    one, you're not going to find a more able one, neutral. She  
22    deals with complex patent matters all the time. She's a very  
23    good neutral.

24                  MS. CORBIN: Yes, I've heard.

25                  THE COURT: And I would suggest that you have me



1 include it in the scheduling order.

2 MR. HOFFMAN: We very much welcome having that,  
3 your Honor.

4 THE COURT: My form of order is around. In  
5 fact, we're getting ready to put another one on the  
6 web specific to patents, but there's something around  
7 somewhere.

8 DEPUTY CLERK: It's on the web now.

9 THE COURT: It just went up, I guess. That's  
10 good.

11 Counsel, is there anything else we need to talk  
12 about?

13 MR. HOFFMAN: I guess the only other question we  
14 would have, your Honor, is on the interrogatories. Under  
15 your rules we understand it's 50 interrogatories. We would  
16 just ask that that be made per side.

17 THE COURT: I generally don't get involved. I  
18 really don't. I think the Federal Rules are more than  
19 adequate to go over the discovery process.

20 MR. HOFFMAN: Fine, your Honor.

21 MS. CORBIN: I guess the only other thing,  
22 your Honor, the defense proposal had been, and I guess  
23 a letter came to the Court because I didn't understand  
24 that we weren't in agreement. The defendants had originally  
25 proposed fewer deposition hours. Plaintiffs had wanted

1 240.

2 Part of our agreement to that, evidently, we  
3 didn't have a meeting of the minds minds and I was unaware  
4 of it, on our side we expect we're going to have to take  
5 depositions in Japan through a translator. My experience, it  
6 has been customary to have those hours count. You can't move  
7 any faster if you are translating.

8 THE COURT: Sounds reasonable.

9 MR. HOFFMAN: Your Honor, I think there  
10 will be very few depositions in Japan, but be that as it  
11 may, they had raised this issue and that was part of the  
12 reason why we changed it from 160 to 240. We took that  
13 into account.

14 If there's more time, I will work that out  
15 with Ms. Corbin. I think that's an issue we can resolve  
16 later.

17 THE COURT: Are you satisfied?

18 MS. CORBIN: To the extent if I need it, I'm  
19 going to be able to count those as 30 minutes instead of --  
20 every hour as 30 minutes, that's fine.

21 MR. HOFFMAN: Your Honor, I would hope that  
22 neither side would say it's 240 hours, you cannot have 241 or  
23 242. If anyone needs some additional time, I would think  
24 that's something we'll be able to work out.

25 THE COURT: I guess that should be adequate.

1 MS. CORBIN: We'll work it out.

2 THE COURT: All right. I hope you don't need to  
3 resort to me. If there's an emergency, you can dial up  
4 chambers if I'm available and you have a discovery dispute.  
5 If you are in a deposition or something, I have been known to  
6 get on the phone. I don't like to do it, but in emergencies,  
7 where you're really at an impasse, I will. But I will yell  
8 at you first. Okay.

9 MR. HOFFMAN: Fair enough.

10 THE COURT: All right, counsel. Have a good  
11 weekend.

12 MR. MacPHERSON: Thank you, your Honor.

13 (Conference concluded at 2:45 p.m.)

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